

Exhibit C



ORIGINAL

BARBARA TAGLIARINO

April 28, 2006

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
C.A. NO. 04-12164-MLW

ERIC SOUVANNAKANE,

Plaintiff

v.

SEARS, ROEBUCK AND CO.,

Defendant

DEPOSITION OF: BARBARA TAGLIARINO

Law Offices of Kurt Olson

500 Federal Street

Andover, Massachusetts

April 28, 2006

10:05 a.m.

Charlotte C. Rosati

Registered Professional Reporter

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1 APPEARANCES:

2

3 Representing the Plaintiff:

4 LAW OFFICES OF KURT OLSON

5 500 Federal Street

6 Andover, MA 01810

7 (978) 681-0800

8 BY: KURT OLSON, ESQ.

9

10

11 Representing the Defendant:

12 SUGARNAN, ROGERS, BARSHAK & COHEN, P.C.

13 101 Merrimac Street

14 Boston, MA 02114-4001

15 (617) 227-3030

16 BY: CHRISTINE M. NETSKI, ESQ.

17

18

19 Representing Gary Mansfield:

20 PIERCE, DAVIS & PERRITANO, LLP

21 Ten Winthrop Square

22 Boston, MA 02110-1257

23 (617) 350-0950

24 BY: JOHN J. CLOHERTY III, ESQ.

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I N D E X

WITNESS: BARBARA TAGLIARINO

EXAMINATION BY:

PAGE:

Mr. Olson

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E X H I B I T S

PAGE:

No. 1	Handwritten note, 1pp	12
No. 2	Handwritten note, 1pp	16
No. 3	Statement, 2pp	17
No. 4	Saugus Police Department Narrative	19
No. 5	ENPRO Services, Inc. invoice, 2pp	20

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STIPULATIONS

It is agreed by and between the parties that all objections, except objections as to the form of the questions, are reserved and may be raised at the time of trial for the first time.

It is further agreed by and between the parties that all motions to strike unresponsive answers are reserved and may be raised at the time of trial for the first time.

It is further agreed by and between the parties that the reading and signing of the deposition by the deponent may be signed under the pains and penalties of perjury within (30) thirty days of receipt.

- - - -

BARBARA TAGLIARINO, having been satisfactorily identified and duly sworn by the Notary Public, deposes and states as follows:

EXAMINATION BY MR. OLSON:

Q. Good morning, Ms. Tagliarino.

A. Good morning.

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1 Q. I met you downstairs. My name is Kurt
2 Olson, and I represent the Plaintiff, Eric
3 Souvannakane, in this action.

4 Could you please state your
5 name, and spell your last name, for the record,
6 please?

7 A. Barbara Tagliarino.
8 T-A-G-L-I-A-R-I-N-O.

9 Q. The Court Reporter asked us to sit
10 closely to her today so she could understand
11 everything, but I will still ask you to keep
12 your voice up, and rather than nodding in
13 responding to a question, be sure to speak an
14 answer to a question.

15 Also please wait until I
16 finish asking my questions, and I'll wait for
17 you to finish your response before I ask you
18 another question, so the Court Reporter won't
19 have a difficult time. If you need a break at
20 any time during the course of this deposition,
21 please let me know, and I will take a break.

22 You understand today that
23 your testimony is given under oath?

24 A. Yes.

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1 Q. All right. And did you speak with
2 anyone in order to prepare for today's
3 deposition?

4 A. Yes.

5 Q. Okay. With whom did you speak?

6 A. Chris.

7 Q. Did you make any notes in preparation
8 for today's deposition?

9 A. No.

10 Q. And did you bring any documents with
11 you?

12 A. No.

13 Q. Okay. Have you ever been deposed
14 before?

15 A. Yes.

16 Q. And what was that for?

17 A. Uh. An associate that was terminated
18 from Sears.

19 Q. Okay. Was that an associate
20 terminated from the Automotive Department, or
21 somewhere else?

22 A. Full line stores.

23 Q. A little background information.
24 Where do you live now?

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1 A. Farmington, Connecticut.

2 Q. Okay. And educational background.

3 Where were you educated?

4 A. Buffalo, New York.

5 Q. High school? College?

6 A. Bishop McMahon High School, and Bryant
7 & Stratton Community College, Buffalo,
8 New York.

9 Q. And where are you currently employed?

10 A. Sears, Burlington, Mass.

11 Q. And prior to being employed at the
12 Burlington store, where did you work?

13 A. Saugus, Mass.

14 Q. When did you leave the job at Saugus
15 to move on to Burlington?

16 A. Two months ago.

17 Q. And what is your current position with
18 Sears?

19 A. Store manager.

20 Q. And how long have you been in that
21 position?

22 A. Seven years.

23 Q. I believe that some of the documents
24 we've received refer to you as general manager;

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1 is that correct?

2 A. It's the same.

3 Q. The same thing, okay. To your
4 knowledge, does Sears have an
5 anti-discrimination policy?

6 A. Yes.

7 Q. Okay. And could you tell me what that
8 policy consists of?

9 A. Uh.

10 Q. If you know.

11 A. Yeah, I don't know.

12 Q. Okay. As part of your duties as
13 manager of a store, is there something that you
14 regularly do to insure compliance with the
15 anti-discrimination policy?

16 A. Sears has a Code of Conduct policy. I
17 think that's included in that. And I think
18 yearly it's signed by the associates.

19 Q. Okay. And assuming-- I'm sorry. At
20 the Automotive Department, there are supervisors
21 who work on a regular basis. Did those people
22 also receive training in the anti-discrimination
23 policy?

24 A. Yes.

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1 Q. Okay. And are there signs posted in
2 Sears that inform employees of the
3 anti-discrimination policy?

4 A. Yes.

5 Q. Okay. And if someone happened to
6 lodge a complaint about inappropriate racial or
7 ethnic slurs, is that something that you would
8 want to know about?

9 A. Yes.

10 Q. And if you have received those types
11 of complaints in the past, what have you done
12 about them?

13 A. I get in touch with my district
14 manager in Human Resource, Corporate Sears, and
15 then proceed from that.

16 Q. Okay. And is the policy with the
17 upper level management clearly articulated
18 somewhere; in other words, what you're supposed
19 to do? Is that laid out in the policy?

20 A. It's laid out from the Human Resource
21 Department, Corporate Sears.

22 Q. Okay. Who decides whether to hire an
23 applicant for employment at any given Automotive
24 Department? Actually, let's stick to the Saugus

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1 store. I'm sorry. Who would have decided
2 whether to hire an applicant?

3 A. If it's full line stores, it would be
4 my assistant managers or myself.

5 Q. Do you know Eric Souvannakane?

6 A. Yes.

7 Q. Okay. And do you know who hired him?

8 A. Anthony Cieri, C-I-E-R-I.

9 Q. Do you know if Mr. Cieri is still
10 employed with Sears, Saugus?

11 A. Yes, he is.

12 Q. Do you know anything about
13 Mr. Souvannakane's work performance history?

14 A. No.

15 Q. Did you ever receive any reports from
16 subordinates, Mr. Cieri, or others about his
17 performance history?

18 A. No.

19 Q. Are there any criteria either within
20 the Automotive Department or full line stores
21 for evaluating an employees' performances?

22 A. Yes.

23 Q. And are those based on specific
24 policies?

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1 A. Yes.

2 Q. Okay. How often would you receive
3 reports from the Automotive Department
4 supervisors about work employees' performances?

5 A. I would not.

6 Q. Okay. Have you ever heard certain
7 employees in the Automotive Department at Sears,
8 Saugus complain that employees who work hard are
9 fired, and those who are lazy are kept on?

10 A. No.

11 MS. NETSKI: Objection to
12 the form.

13 Q. (By Mr. Olson) Do you recall calling
14 Eric Souvannakane into your office on September
15 29th, 2003?

16 A. Somewhat.

17 Q. Okay. Do you know why you called him
18 into the office on that date?

19 A. To terminate him.

20 Q. I think this was the prior one. There
21 were actually two incidents.

22 A. I don't remember.

23 Q. Okay. Do you remember that there were
24 two different times when you called him into

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1 **your office?**

2 A. No.

3 Q. Okay. Do you recall the substance of
4 any conversation you might have had with
5 Mr. Souvannakane at that time?

6 A. No.

7 Q. Okay. Do you remember if he denied
8 that he ever swore at customers?

9 A. No.

10 Q. Okay. Did you remember warning
11 Mr. Souvannakane that swearing at customers is
12 inappropriate behavior?

13 A. I don't remember.

14 Q. Okay. Excuse me.

15 MR. OLSON: At this time I
16 would like to mark this as Exhibit 1 for
17 identification purposes.

18 (Exhibit No. 1 was marked
19 for identification)

20 Q. (By Mr. Olson) Would you like to look
21 at the original?

22 A. (Complying)

23 Q. Do you see your name on this document?

24 A. Yes.

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1 Q. Is this the only record that Sears
2 would have that Mr. Souvannakane received for
3 swearing at customers?

4 A. I don't know.

5 Q. Okay. Do you know who it is that
6 signed this document in addition to
7 Mr. Souvannakane?

8 A. It looks like Anthony Cieri.

9 Q. I'm sorry. Is it Ciera or Cieri?

10 A. Cieri.

11 Q. Okay. Could you explain why you
12 wouldn't have signed this document personally if
13 your name is on it?

14 A. Because Anthony has full authorization
15 to discipline his associates.

16 Q. Okay. So Mr. Cieri has the authority
17 to discipline. Does he also have the authority
18 to fire?

19 A. Yes.

20 Q. Okay. So Mr. Souvannakane did not
21 necessarily have to come to your office in order
22 to be terminated; is that correct?

23 A. Depending on the situation.

24 Q. Okay. Do you recall whether you have

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1 ever warned any other employees about swearing
2 at customers?

3 A. I don't remember.

4 Q. Okay. Generally speaking, what kind
5 of supervision is exercised over employees
6 working in the Auto Department?

7 MS. NETSKI: Objection.

8 But you can answer.

9 A. Umm. Anthony Cieri is the store
10 manager of Auto. He has full autonomy as to
11 what goes on in the Auto Center.

12 Q. (By Mr. Olson) Do you know whether
13 Mr. Cieri has knowledge of what any particular
14 tech is doing at any one time?

15 MS. NETSKI: Objection.

16 You can answer.

17 A. I don't know.

18 Q. (By Mr. Olson) Okay. Do you know if
19 certain tasks are assigned by Mr. Cieri during
20 the course of a day?

21 A. I don't know.

22 Q. Do you know whether individual techs
23 have a certain amount of freedom in terms of
24 what task they perform on a given day?

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1 A. I don't know.

2 Q. Okay. Do you recall an incident in
3 the Tech Department where an employee allegedly
4 fought with a customer and wound up injuring a
5 female Sears employee?

6 A. I don't remember.

7 Q. Okay. Do you recall whether a female
8 employee ever came into your office to complain
9 about being hit during the course of that
10 incident?

11 A. No.

12 Q. Okay. Do you recall whether any
13 employees were fired as a result of that
14 physical altercation?

15 A. No.

16 Q. Do you recall if you have ever taken
17 any steps in the Sears store to try and lighten
18 the tensions between employees and customers?

19 MS. NETSKI: Objection.
20 You can answer.

21 A. No.

22 Q. (By Mr. Olson) Do you have a policy
23 of writing out witness statements and then
24 having witnesses sign the statements?

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1 A. Yes.

2 Q. Okay. And what is that policy based
3 on? In other words, when would you do something
4 like that?

5 A. Depending on the situation that
6 occurred between associates or customers.

7 Q. Okay.

8 A. Accidents.

9 MR. OLSON: I would like to
10 mark this as Exhibit No. 2 for identification.

11 (Exhibit No. 2 was marked
12 for identification)

13 Q. (By Mr. Olson) Do you recognize this
14 document?

15 A. No.

16 Q. Okay. If you look at the ninth line
17 down on this document, it's the line that begins
18 with the words, "to talk to management".

19 A. Eh-heh.

20 Q. And then the next sentence says, "Andy
21 spoke to the customer to calm her down." Do you
22 see that?

23 A. Yes.

24 Q. Do you also see at the bottom where it

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1 says it looks like Andy DiGaetano's signature?

2 A. Yes.

3 Q. Is this an example of a time when
4 someone at Sears would have written out a
5 witness statement and then have the witness
6 sign?

7 A. Yes.

8 MR. OLSON: I would like to
9 mark this as Exhibit No. 3 for identification.

10 (Exhibit No. 3 was marked
11 for identification)

12 Q. (By Mr. Olson) Do you recognize this
13 document, Ms. Tagliarino?

14 A. No.

15 Q. If you turn to the second page of this
16 document, do you see where it says, "Written
17 with permission of Jose Hernandez to John Reid
18 and William Sullivan", and then an arrow points
19 to their signatures, it looks like, down below.

20 A. Yes.

21 Q. Okay. Is this another example of a
22 time when you may have filled out a witness
23 statement and then have the witness sign?

24 MS. NETSKI: Objection.

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1 There's no evidence that she filled out this
2 statement.

3 MR. OLSON: Can she
4 answer?

5 A. The question again, please?

6 Q. (By Mr. Olson) You spoke earlier how
7 there's a policy at Sears where you will fill
8 out witness statements and then have the witness
9 sign. Would this be another example?

10 A. Yes.

11 Q. Thank you. Do you know John Reid?

12 A. Yes.

13 Q. And is John Reid still employed at
14 Sears, Saugus, as far as you know?

15 A. John Reid is the Auto Center district
16 manager.

17 Q. Does that mean that he supervises
18 Mr. Cieri?

19 A. Yes.

20 Q. Okay. Do you know how far his reach
21 would extend; in other words, how far his
22 district is?

23 A. It is Boston and Nashua.

24 Q. Okay. So any stores within that

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1 **geographical area; is that correct?**

2 A. Yes.

3 Q. Thank you.

4 MR. OLSON: I would like to
5 mark this as Exhibit No. 4 for identification.

6 (Exhibit No. 4 was marked
7 for identification)

8 Q. (By Mr. Olson) Have you ever seen
9 this document before?

10 A. No.

11 Q. If you would like, look on lines 3 and
12 4 of this document?

13 A. (Complying)

14 Q. Do you see where it says, "The spiller
15 required Sears to hire a hazardous waste company
16 which cost Sears approximately three thousand
17 dollars"?

18 A. Yes.

19 Q. And do you see where that looks like a
20 narrative for Patrolman Gary E. Mansfield?

21 MS. NETSKI: Objection.
22 That's what it says.

23 Q. (By Mr. Olson) On the top of the
24 document?

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1 A. Yes.

2 Q. Thank you. Do you think the figure of
3 three thousand dollars was accurate?

4 A. I don't know.

5 Q. Okay.

6 MR. OLSON: I would like to
7 mark this as Exhibit No. 5 for identification.

8 (Exhibit No. 5 was marked
9 for identification)

10 Q. (By Mr. Olson) Referring you to the
11 second page of this document at the bottom--

12 A. (Complying)

13 Q. -- where it says, Total, and an amount
14 listed there for four thousand four hundred
15 eighty-three dollars and sixty-five cents, do
16 you see that?

17 A. Yes.

18 Q. Okay. And do you recognize this
19 document?

20 A. No.

21 Q. Okay. Did you have anything to do
22 with contacting ENPRO Services to perform a
23 clean-up at Sears?

24 A. No.

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1 Q. Okay. So you would have no way of
2 explaining the discrepancy between the three
3 thousand-dollar cost and this four thousand four
4 hundred eighty-three dollar cost; is that right?

5 A. Yes.

6 Q. You spoke earlier about there being a
7 discrimination policy at Sears-- I'm sorry--
8 anti-discrimination policy at Sears. Are there
9 any standards, written or otherwise, dealing
10 with termination or disciplinary policies at
11 Sears?

12 A. Yes. There's an associate handbook.

13 Q. And if there's a handbook, is that
14 handbook given to employees when they're first
15 hired?

16 A. Yes.

17 Q. And does this handbook contain
18 information about both the anti-discrimination
19 policy and the hiring and firing policy?

20 A. Yes.

21 Q. Thank you. Are there posters around
22 Sears that inform employees about the discharge
23 or disciplinary policies?

24 A. No.

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1 Q. Okay. And in the handbook, are
2 employees told about what particular offenses
3 could result in discharge or discipline?

4 A. Yes.

5 Q. Okay. And does the handbook also
6 inform them about how many different warnings or
7 notices they would receive before being
8 terminated?

9 A. I don't remember.

10 Q. Okay. I think you said earlier that
11 Mr. Cieri as manager of the Automotive
12 Department has the authority to fire employees
13 on his own; is that correct?

14 A. Yes.

15 Q. And did the manager recommend to you
16 that Mr. Souvannakane be fired?

17 A. Yes.

18 Q. Okay. And did you make the decision
19 to fire him based on Mr. Cieri's recommendation?

20 A. No.

21 Q. Okay. Then upon what did you make the
22 decision?

23 A. Corporate Human Resource Department.

24 Q. And who did you speak with at Human

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1 **Resources?**

2 A. I don't remember.

3 **Q. Did you have occasion to call Human**
4 **Resources, or did they contact you for some**
5 **reason?**

6 A. No. We called them.

7 **Q. Did you terminate Mr. Souvannakane**
8 **without notice?**

9 A. Yes.

10 **Q. Okay. And do you usually give notice**
11 **to employees before terminating them?**

12 A. No.

13 **Q. Okay. Why did you find it necessary**
14 **to terminate Mr. Souvannakane without notice in**
15 **this case?**

16 A. Can you explain what you mean by--

17 **Q. Sure. Was the termination to**
18 **discharge Mr. Souvannakane based on Human**
19 **Resources' call to you--**

20 A. Yes.

21 **Q. -- to do so? Did anyone conduct an**
22 **investigation into the allegations against**
23 **Mr. Souvannakane before you decided to fire him?**

24 A. Corporate HR does that.

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1 Q. And do you know who it was
2 specifically that did the investigation?

3 A. No.

4 Q. When did you first hear of the spill
5 at the Sears Automotive Department?

6 A. A couple of days after.

7 Q. Okay. And did you consider the spill
8 a major incident?

9 A. Yes.

10 Q. Okay. You said that you only heard
11 about it a couple of days afterward. If it was
12 a major incident, would you have wanted to know
13 about it sooner?

14 A. I was off all week.

15 Q. Okay. So then you never had occasion
16 to view the results of the spill; is that
17 correct?

18 A. No. Correct.

19 Q. Did anyone tell you about witnesses
20 who may have seen the oil spill?

21 A. No.

22 Q. Okay. Do you know William Sullivan?

23 A. Yes.

24 Q. And do you know what his position is

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1 at Sears?

2 A. He's the District Loss Prevention
3 Manager for Boston.

4 Q. Okay. Have you ever received any
5 complaints about Mr. Sullivan attempting to
6 coerce witnesses into testifying falsely?

7 A. No.

8 Q. Would it concern you if you did
9 receive such complaints?

10 A. Yes.

11 Q. Have you heard that Mr. Hernandez, the
12 witness who allegedly-- who signed the
13 complaint-- sorry-- the statement alleging that
14 Mr. Souvannakane had spilled the oil, later told
15 Mr. Souvannakane, "I'm not going to lie for
16 Sears. I'm out of here"?

17 MS. NETSKI: Objection.

18 MR. CLOHERTY: Objection.

19 A. No.

20 Q. (By Mr. Olson) Okay. Were you ever
21 told what the spill consisted of in the
22 Automotive Center?

23 A. No.

24 Q. Okay. Do you know what Sears normally

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1 does with its waste oil?

2 A. No.

3 Q. Do you know whether Sears pays an
4 independent company to come and pick up the
5 waste oil?

6 A. I don't know.

7 Q. Okay. Do you know who would be in
8 charge of that?

9 A. Anthony Cieri.

10 Q. Okay. Do you know whether or not any
11 other property was damaged during the course of
12 the oil spill?

13 A. I don't know.

14 Q. Okay. Do you know Alicia Coviello?

15 A. Yes.

16 Q. I believe that's C-O-V-I-E-L-L-O. Is
17 that correct?

18 A. I think so.

19 Q. Do you know her position at Sears?

20 A. She was a Loss Prevention associate.

21 Q. Okay. Is she no longer working at
22 Sears?

23 A. Correct.

24 Q. Okay. What is your evaluation of

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1 **Ms. Coviello's work performance while she worked**
2 **at Sears?**

3 A. Excellent.

4 Q. Okay. Did you ever receive any
5 complaints about Ms. Coviello's work
6 performance?

7 A. No.

8 Q. Did you hear that after Miss Coviello
9 heard about the oil spill in the Automotive
10 Department, that she went to the Automotive
11 Department with a roll of paper towels?

12 A. No.

13 Q. Do you have any reason to believe that
14 Miss Coviello may have given false testimony
15 against Mr. Souvannakane?

16 A. No.

17 Q. Do you know about a spill at the Sears
18 Automotive Center that happened over the past
19 couple of months?

20 A. No.

21 Q. Okay.

22 MR. OLSON: That's it.

23 THE WITNESS: Okay.

24 MR. OLSON: Any questions?

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MS. NETSKI: John?

MR. CLOHERTY: Nothing.

MR. OLSON: Thanks very
much.

(Deposition concluded at 10:35 a.m.)

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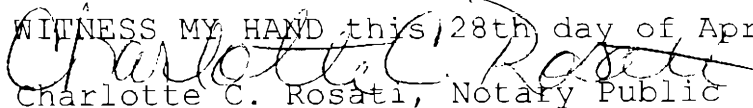
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1 I, CHARLOTTE C. ROSATI, a Notary Public in
2 and for the Commonwealth of Massachusetts, do
3 hereby certify that BARBARA TAGLIARINO came
4 before me on the 28th day of April, 2006, at
5 Andover, Massachusetts, and was satisfactorily
6 identified and duly sworn by me to testify to
7 the truth and nothing but the truth as to her
8 knowledge touching and concerning the matters in
9 controversy in this cause; that the deponent was
10 thereupon examined upon her oath, and said
11 examination reduced to writing by me; and that
12 the statement is a true record of the testimony
13 given by the deponent, to the best of my
14 knowledge and ability.

15 I further certify that I am not a relative
16 or employee of counsel or attorney for any of
17 the parties, nor a relative or employee of such
18 parties, nor financially interested in the
19 outcome of the action.
20
21

22 WITNESS MY HAND this 28th day of April, 2006
23 
Charlotte C. Rosati, Notary Public

24 My Commission expires: January 19, 2007

BARBARA TAGLIARINO

April 28, 2006

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1 Today's date: April 28, 2006
2 To: Kurt Olson, Esq.
3 Copied to: Christine M. Netski, Esq.
4 Copied to: John J. Cloherty III, Esq.
5 From: Charlotte C. Rosati, RPR
6 Deposition of: Barbara Tagliarino
7 Taken: April 28, 2006
8 Action: SOUVANNAKANE
9 vs. SEARS, ROEBUCK
10
11

12 Enclosed is a copy of the deposition of
13 Barbara Tagliarino. Pursuant to the Rules of
14 Civil Procedure, the deponent has thirty days to
15 sign the deposition from today's date.

16 Please have Ms. Tagliarino sign the
17 enclosed signature page. If there are any
18 errors, please have her mark the page, line and
19 error on the enclosed correction sheet. The
20 deponent should not mark the transcript itself.
21 This addendum should be forwarded to all
22 interested parties.

23 Thank you for your cooperation in this
24 matter.

BARBARA TAGLIARINO

April 28, 2006

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3 C.A. NO. 04-12164-MLW
4
5

6 ERIC SOUVANNAKANE,

7 Plaintiff

8 v.

9 SEARS, ROEBUCK AND CO.,

10 Defendant
11
12
13
14

15 I, BARBARA TAGLIARINO, do hereby certify
16 under the pains and penalties of perjury that
17 the foregoing testimony is true and accurate, to
18 the best of my knowledge and belief.

19 WITNESS MY HAND this day of
20 2006.
21

22 BARBARA TAGLIARINO

23 CCR
24

CATUOGNO COURT REPORTING SERVICES

Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI

CORRECTION SHEET

DATE TAKEN: April 28, 2006

PAGE	LINE	CHANGE AND CORRECTION AND REASON
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This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.